

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

77-4098

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

-----X
FON S. LEONG and EILEEN LEONG,

Petitioners-Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee
-----X

DOCKET NO.

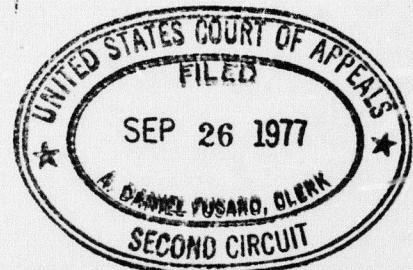
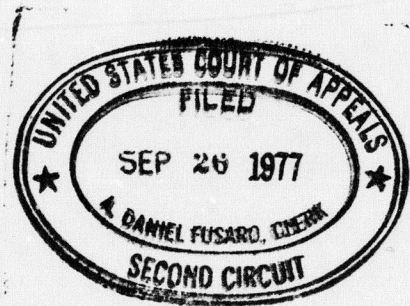
77-4098

APPEAL FROM UNITED STATES TAX COURT
APPELLANTS' BRIEF
AND
APPENDIX
-----X

B
R/S

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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

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FON S. LEONG and EILEEN LEONG,

DOCKET NO.
77-4098

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COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee

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APPEAL FROM UNITED STATES TAX COURT
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PRELIMINARY STATEMENT

This case was tried before Judge Theodore Tannenwald, Jr. in the United States Tax Court (Docket No. 157-74) on January 15, 1976. Decision was entered January 31, 1977, T.C. Memo 1977-19. (Appendix p.20)

The evidence consisted of a stipulation of facts with joint exhibits 1-A through 8-H attached, oral testimony, exhibits and trial memoranda introduced at trial. Subsequently the taxpayers' (Appellants') brief was filed, followed by the Commissioner of Internal Revenue's Answering Brief and taxpayers' Reply Brief.

STATEMENT OF ISSUES PRESENTED

1. Did, and could, taxpayers' (appellants') small Chinese restaurant generate the substantial additional income alleged for the calendar years 1968 and 1969, as claimed by respondent at trial and in its briefs and memoranda?

2. If such issue be decided in the negative, shall the net deposits to banks and brokerage accounts nevertheless be taxed as additional income to the Appellants?

STATEMENT OF THE CASE

This matter is an appeal from the decision of the United States Tax Court (Judge Theodore Tannenwald, Jr.) after trial. Primarily, the Court held that net deposits to enumerated banks and brokerage houses were additional taxable income to the Leongs in the approximate amounts of \$47,900 for 1968 and \$47,200 for 1969.

The entire record indicates that Fon Leong (the husband) operated a small Chinese restaurant in the Chinatown area of New York City. His wife, Eileen, assisted during certain busy hours. The restaurant had approximately nine tables and seated forty persons.

The net amounts of the deposits in the bank and brokerage accounts are not disputed. The question of the taxability of these deposits is the core of the matter.

The taxpayers and their witnesses alleged the funds were entrusted to them by friends. (Entire record) The Court disbelieved such testimony. (Entire record) Aware of the improbability of reversing the lower Court on an opinion based upon witnesses' credibility, we have limited the review to the aforementioned "Issues Presented".

The lower Court further held (Appendix p.28)

that it was of no consequence that it was unlikely that the restaurant could have generated such substantial amounts and in a footnote (Appendix p.28) that respondent had introduced figures showing the possibility of such income; the figures introduced being in the government's brief. (Appendix p. 54)

ARGUMENT

I. Commissioner of Internal Revenue elected to show the source of the alleged unreported income as taxpayers' restaurant and failed to do so.

(a) In the Commissioner's "Brief in Answer" (Appendix p.53) which cites p. 32 of that Brief, he states "It is also respondent's position that petitioners had a likely source of income, their restaurant business." He goes on at length making unwarranted assumptions, such as 45 minutes per person to dine and that the restaurant was open seven days per week. Nowhere in the entire record is there any mention of a seven-day week. (Appendix p.52) which cites p. 19 of the same brief, under the heading "Points Relied Upon" -- "Even so it is respondent's position that petitioners' restaurant was a likely source that could indeed have produced the unexplained deposits".

(b) During the course of the trial the Revenue Agent Fort, the government's witness testified (Appendix p.58) "I believe I indicated that I would be surprised to learn that the business generated the excess deposits in question."

(c) Towards the end of the trial (Appendix

p. 59) the Court stated: "...[T]he Court was under the impression that up until this moment, the respondent was resting its case on the -- really, on the basis that credibility was involved ..." "And that generally I was not ... I did not understand up until this point that respondent was pointing to the restaurant business (as) a likely source, ...". The Court with no objection from respondent thereupon included his Trial Memorandum as part of the record. The Court went on to say "... this is the first time that I was under the impression that respondent seriously contended that the business might have generated this amount of money in these years." "...This is the first time the Court has had any indication that it was respondent's contention that the business could have generated this amount of money in these taxable years."

(d) The Court in its opinion (Appendix p. 28)(stated in footnote 5) "The fact of the matter is that respondent has introduced figures showing that it was not impossible for petitioners' restaurant to generate such receipts" Note - "figures" not "testimony" or "evidence". The court further stated that "[w]e need give no more than passing attention to the fact that it may have been unlikely

that the restaurant business could have generated the substantial amounts represented by deposits".

This Court of Appeals can independently determine the validity of the "figures" presented by the government without testimony or further evidence. Based on those figures it was improbable and actually well-nigh impossible for the restaurant to generate such receipts. See Federal National Bank of Shawnee v. Commissioner (CA-10) 50-1 USTC ¶9184, 180 F. 2d 494 where it was contended by the Commissioner that the records do not clearly reflect income. The Court held that it was sufficient for the taxpayer to show that the determination was excessive and invalid. The method adopted by the Commissioner to reflect taxpayer's income must be reasonable. Bradstreet Co. of Maine (CA-1) 3 USTC ¶ 1138, 65 F. 2d 943.

These "figures" appear in "Exhibit A" attached to "Respondent's Brief in Answer" and are reproduced at Appendix p. 54. They show an arbitrary forty-five minutes consumed per dining customer with a minimum "turnover" of four times in five and one-quarter hours -- computed at forty customers when fully occupied and a total of 160 customers per evening. There is no testimony at any time

that the restaurant was open seven days a week, a total impossibility with the taxpayer as the sole chef (uncontroverted testimony). It goes beyond credibility to believe that this small restaurant, one flight up, in a highly competitive area of Chinatown could have generated gross receipts of \$112,000 per year with a net taxable business income in 1968 of \$61,000 and in 1969 of a similar amount. See Form 1040, Schedule C for 1968 - Exhibit 1A and Schedule C for 1969, Exhibit 2-B. Each reflects a taxable business income in excess of \$13,000 to which the Commissioner has now added in excess of \$47,000 per year. (Appendix pp. 38, 41).

In addition, the Commissioner's computations fail to consider the very warm weather, the stormy days and nights, the wintry weather when few, if any, diners leave their homes.

While we have no schedules, nor statistics, we believe that this Court can recognize the situation that diners in a Chinese restaurant take more than forty-five minutes (on an average) to eat. We wonder whether any restaurant at all has a "turnover" -- that is the use of the same table -- of four times in one evening?

On the other hand, the Federal Rules of Evidence (Public Law 93-595, 93d Cong., 2d Sess., approved January 2, 1975, effective July 1, 1975) "Rule 143. Evidence (b) Ex Parte Statements". Ex Parte affidavits, statements in briefs, and unadmitted allegations in pleadings do not constitute evidence". In the absence of the Commissioner's brief which cites "figures" no testimony or evidence is presented that the restaurant produced, or could have produced, such substantial income.

As a result, the allegation that the restaurant was the likely source of income results in a deficiency which is arbitrary and excessive.

II. The deficiency, resulting from the lower Court's decision, is arbitrary and excessive.

At no point in the entire record (testimony, briefs, memoranda or opening statements) are there any allegations, or evidence, or even inferences, that taxpayers had any source of income other than the restaurant (and the interest, dividends and shares of stock). The record discloses that, except for a minor omission, interest, dividends and gains on sales of shares, were properly reported. (Appendix pp. 56, 57).

All parties were in accord that the restaurant was small and one flight up. Pure logic and business sense would indicate that in a competitive area (Chinatown) no restaurant could earn a net, taxable profit of \$61,000 per year or gross receipts of \$112,000 per year. (Appendix p. 54).

The lower Court, in its opinion at page 9 (Appendix p.28) stated "... we need give no more than passing attention to the fact that it may have been unlikely that the restaurant business could have generated the substantial amounts represented by deposits. Foster v. Commissioner, supra. At best, any such lack of income - generating capacity would be corroborative evidence to support the petitioner's claimed sources of the funds." (underscoring added)

Why then arbitrarily reject and discard this "corroborative evidence"?

Why "no more than passing attention to the fact" that the substantial amounts might not have been generated by the restaurant?

III. The Commissioner, having elected to show the restaurant as the source of the additional income, and

having failed to do so, cannot now allege that he need not prove a source of income.

It is generally accepted that the burden of proof is upon the petitioners -taxpayers. Further and consistent with that general rule is the further rule that the burden of proof is on the party alleging the facts which create the issue. Estate of Ben Stone, 50 T.C. 113, 122 (1965); Nicalls, North, Buse Co., 56 T.C. 1225 (1971), and Estate of Floyd Falese, 58 T.C. 895 (1975)

In the event that this Court sustain the taxpayers' argument presented above then there are certain cases which hold that the deficiency determined by the respondent generally will not be permitted to stand. Helvering v. Taylor, 293 U. S. 507 (1935). The Supreme Court ruled that a deficiency shown to be arbitrary and excessive would remove the presumption of correctness of the respondent's determination. The burden of proof has thus shifted to the respondent. Cohen v. Commissioner, 266 F. 2d 5 (9th Cir. 1959); Herbert v. Commissioner, 377 F. 2d 69 (9th Cir. 1966); Kaufman v. Commissioner, 372 F. 2d 789 (4th Cir. 1966); Welch v. Commissioner, 297 F. 2d 309 (4th Cir. 1961); Andrews v. Commissioner,

135 F. 2d 314 (2d Cir. 1943) (L. Hand Jr., dissenting on this point).

In any event the "Burden of Proof Rule" should not be applied to defeat Justice. (See Mertens' Law of Federal Income Taxation, Sect. 50.65). Cited therein is the matter of Virginia Lincoln Furniture Co. v. Commissioner, 56 F. 2d 1028 (CCA-4) 1932, which stated in part "...to avoid carrying the rule to unreasonable lengths, in which event it might effect more harm than good;" ... and to attain "substantial justice".

CONCLUSION

Taxpayers ask that this Court consider the matter and find that there are no deficiencies in income taxes resulting from the omission of gross receipts from the restaurant business, or in the alternative that the matter be remanded to determine whether or not the restaurant did or could have generated the alleged income, and for such other relief as the Court may deem just and proper.

Dated: September 26, 1977

Eugene O. Cobert
Counsel for Appellants
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New York, New York 10017
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APPENDIX

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MAY 19 1977

Mr. A. Daniel Fusaro, Clerk
United States Court of Appeals
for the Second Circuit
U. S. Courthouse, Foley Square
New York, New York 10007

Re: Fon S. Leong and Eileen Leong,
Petitioners-Appellants
vs.
Commissioner of Internal Revenue,
Respondent-Appellee
Docket No. 157-74

Dear Mr. Fusaro:

There is transmitted herewith, under my certificate, the record on appeal in the above-entitled case.

Appeal is taken by the petitioners in this Court. Counsel for the appellants is Mr. Eugene O. Cobert, 60 East 42nd Street, New York, New York 10017.

Counsel for the Commissioner of Internal Revenue are Scott P. Crampton, Assistant Attorney General, Tax Division, United States Department of Justice, Washington, D. C. 20530, upon whom service of documents and papers in proceedings in the Court of Appeals is to be made, and Meade Whitaker, Chief Counsel, Internal Revenue Service.

Yours very truly,

Charles S. Casazza
Clerk of the Court

(signed) Elizabeth S. Yarovsky
By
Deputy Clerk in Charge of
Appellate Matters

Enclosure:
(1) Volume of Record

FON S. LEONG AND EILEEN LEONG,
Petitioners
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent

Tax Court Docket No. 157-74

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UNITED STATES TAX COURT

GENERAL DOCKET

DOCKET NO. 157-74

FRON S. LEONG AND EILEEN LEONG 50 Bayard St. New York, N.Y. 10013 VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.	APPEARANCES FOR PETITIONER: Eugene O. Cobert ⁶⁰ 41 East 42nd St. New York, N.Y. NAME <u>10017</u> ADDRESS _____ _____ _____
--	---

Date Month Day Year	Filings and Proceedings	Action	Served
Dec. 31, 1973	PETITION FILED: FEE PAID Dec. 31, 1973		Jan. 4, 1974
Dec. 31, 1973	REQUEST by Petr. for trial at New York, N.Y. FILED	GRANTED Jan. 4, 1974	Jan. 4, 1974
Mar. 1, 1974	ANSWER by Resp. filed.		Mar. 4, 1974
Dec. 12, 1974	NOTICE OF CHANGE OF ADDRESS by Petr.'s attorney filed.		DEC 17 1974
Feb. 5, 1975	NOTICE OF TRIAL on May 12, 1975 at New York, N.Y.		Feb. 5, 1975
May 12, 1975	HEARING at New York, N. Y. before Judge Fay.		
	Motion for general continuance by Petr. - GRANTED		MAY 27 1975
Oct. 10, 1975	NOTICE OF TRIAL on January 12, 1976 at New York, NY		Oct. 10, 1975
Jan. 12 & Jan. 15, 1976	TRIAL at New York, N.Y. before Judge Tannerwald.		
	STIPULATION OF FACTS with attached exhibits, filed 1-15-76.		
	Resp.'s Trial Memorandum filed & served, 1-15-76.		
	Petr.'s Trial Memorandum filed & served, 1-15-76.		
	SERIALIZED: PETR.'S OPENING BRIEF DUE: Mar. 1, 1976 RESP.'S ANSWERING BRIEF DUE: Apr. 15, 1976 PETR.'S REPLY BRIEF DUE: May 17, 1976		
	SUBMITTED TO JUDGE TANNERWALD		
Feb. 6, 1976	TRANSCRIPT of Jan. 15, 1976 rec'd.		
Mar. 1, 1976	MOTION by Petr. to extend time to Mar. 16, 1976 to file Petr's. Opening Brief. (No Obj. Resp.)	GRANTED Mar. 3, 1976	MAR 4 1976
Mar. 17, 1976	BRIEF for Petr. filed. (PM timely)		MAR 18 1976

(CONTINUED TO PAGE 2)

Form No. 34
May 1970

FON S. LEONG AND EILEEN LEONG			PETITIONER	PAGE 2
Date	Filings and Proceedings (J. TANNENWALD)		Action	Served
Month Day Year				
Apr. 22, 1976	MOTION by Resp. to extend time to May 31, 1976 within		GRANTED Apr. 23, 1976	APR 26 1976
	which to file Brief, (Answering) (No Obj. Petr.)			
June 1, 1976	RESP. ANSWERING BRIEF filed.			JUN 2 1976
July 2, 1976	REPLY BRIEF filed by petr.			JUL 2 1976
Jan. 31, 1977	MEMORANDUM FINDINGS OF FACT & OPINION filed, Judge Tannenwald.			JAN 31 1977
	Decision will be entered for Resp.			
Jan. 31, 1977	DECISION ENTERED, Judge Tannenwald.			JAN 31 1977
	APPELLATE PROCEEDINGS			
April 29, 1977	ORDER that the Clerk is directed to attach the signed			
	transmittal letter to notice of appeal said letter to			
	be and is the signature page of notice of appeal, it			
	is further			
	ORDERED that said notice with attached signature page			
	is to be filed as of April 29, 1977.			April 29, 1977
April 29, 1977	NOTICE OF APPEAL to U.S.C.A., Second Circuit, filed by			
	Petr.			April 29, 1977
April 29, 1977	NOTICE of Filing with copy of notice of appeal sent to			
	Mr. Meade Whitaker, Chief Counsel.			April 29, 1977
April 29, 1977	NOTICE, to parties, of assembling and date for trans-			
	mission of the record.			April 29, 1977
May 12, 1977	U.S.C.A., 2nd Circuit Civil Appeal Scheduling Order			
	that the record be filed in C.A. on or before			
	June 6, 1977. filed.			May 12, 1977
May 12, 1977	ORDER that the Clerk is directed to file the Scheduling			
	Order this date and said Clerk is directed to trans-			
	mit the record on appeal on or before May 16, 1977.			May 12, 1977

T. C. Memo. 1977-19

UNITED STATES TAX COURT

FON S. LEONG and EILEEN LEONG, Petitioners v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 157-74.

Filed January 31, 1977.

Eugene O. Cobert, for the petitioners.

Richard M. Campbell, for the respondent.

SERVED JAN 31 1977

MEMORANDUM FINDINGS OF FACT AND OPINION

TANNENWALD, Judge: Respondent determined the following deficiencies in petitioners' Federal income tax:

<u>Year</u>	<u>Income tax</u>	<u>Additions to tax (Sec. 6653(a))</u> ¹
1968	\$26,161.03	\$1,308.05
1969	24,685.21	1,234.26

The questions before us are: (1) whether petitioners had unreported income for each of the years in question in the amounts reconstructed by respondent based upon net deposits to their bank and brokerage accounts and (2) if any such amounts were income, whether petitioners are liable for the additions to tax under section 6653(a).

FINDINGS OF FACT

Some of the facts have been stipulated by the parties and are incorporated herein by this reference.

Petitioners (hereinafter sometimes referred to as Fon and Eileen, respectively) are husband and wife who resided in New York, New York, at the time of filing their petition herein. They timely filed joint income tax returns for 1968 and 1969 as cash basis taxpayers.

¹

All section references are to the Internal Revenue Code of 1954, as amended and in effect during the years at issue.

During the years in question, petitioners operated a restaurant located on Mott Street in New York City. The restaurant was one flight above street level and could seat between 40 and 50 diners at nine tables. Fon was the chef and was involved in the daily operation of the business, which was open seven days a week. Eileen assisted as a cashier during busier hours. In addition, she tallied the daily receipts of the business from customer checks that her husband brought home to her each evening. Eileen was born and educated in the United States; she graduated from high school, where she pursued a commercial program. Her prior work experience included a job as a bookkeeper at a New York bank. Based upon the records kept by Eileen for the restaurant, petitioners' accountant prepared petitioners' income tax returns.

For the years in question, petitioners reported income from the following sources:

	<u>1968</u>	<u>1969</u>
Net profit from restaurant	\$13,223.75	\$13,282.05
Dividends ¹	1,707.37	1,537.62
Interest	2,712.50	2,891.47
Net gain (or loss) from sale <u>or e change of property²</u>	24,682.96	(2,249.98)

¹
Before any statutory exclusion and exclusive of nontaxable dividends.

²
Before any segregation of short-term and long-term gain and before any deduction for long-term capital gain.

During 1967, 1968, and 1969, petitioners purchased and sold securities.

Most of petitioners' gross receipts from the restaurant, as reported on their tax returns, were deposited in their business bank account at the Chemical Bank New York Trust Company.² They reported \$55,899.95 of such gross receipts for 1968 and \$67,713.05 for 1969.

² A portion of cash receipts was utilized directly for restaurant expenses.

During the taxable year 1968, petitioners maintained 10 savings and brokerage accounts (excluding the aforementioned business account) and one personal checking account, with respect to which they had deposits aggregating \$194,525.18, withdrawals aggregating \$146,632.06, and net deposits (excess of aggregate deposits over aggregate withdrawals) in the amount of \$47,893.12. The comparable amounts for the taxable year 1969 were \$180,364.75, \$133,092.52, and \$47,272.23 in respect of 18 savings and brokerage accounts (excluding their business account) and the one personal checking account. The bulk of the withdrawals from the personal checking account represented payments to the various brokerage accounts.

Neither the gross receipts of petitioners' restaurant nor petitioners' gross receipts from the sale or exchange of property as reported on their 1968 or 1969 tax returns were the source of any of the deposits to bank and brokerage accounts in 1968³ and 1969, respectively.

3

There is no specific evidence on the record before us from which we could likewise conclude that none of the reported interest or dividend income is reflected in the figures. However, at trial, petitioners' counsel conceded that there was no "overlapping," albeit in a somewhat different context.

In addition to their bank and brokerage accounts, petitioners maintained one safe deposit box at the Trade Bank and Trust Company during 1967, 1968, and 1969.

In January, 1967, Ping Chung Leong (Ping Chung),⁴ a relative of Fon, emigrated from Hong Kong to the United States. On his visa application, Ping Chung represented that he had no personal financial resources and would be supported by his father-in-law in the United States. He had not seen Fon between 1949, when Fon came to the United States from Hong Kong, and some time after his arrival in the United States in 1967. Ping Chung resettled in New York with his wife and two children to be near his wife's parents.

Rosita Fu (Rosita) moved from Hong Kong to the United States in 1965. After her arrival that year, she met and became a friend of Eileen. In 1969, Rosita returned to Hong Kong to visit her mother.

Both Ping Chung and Rosita were knowledgeable about business affairs and the practice of banking money.

⁴ Fon and Ping Chung use the word "cousin" to describe each other, not as bloodrelatives, but as being members of the same family grouping.

Ping Chung had been a newspaper reporter and had engaged in the import-export business in Hong Kong; he had maintained a safe deposit box, a checking account, and a savings account there. Rosita had graduated from college in Hong Kong; she was a legal secretary there and had some experience with real estate investments. Upon her arrival in the United States, she took a job as a legal secretary in New York. Thereafter, she worked for an insurance company.

Respondent determined that petitioners' net banking and brokerage account deposits for 1968 and 1969 (see p.5, supra) constituted unreported income.

OPINION

Initially, petitioners argue that respondent's resort to the bank deposits method of income reconstruction was improper since their own books and records comport with their income as reported for the years at issue. Their point is not well taken. The internal consistency of a taxpayer's books does not necessarily establish their accuracy. See Holland v. United States, 348 U.S. 121, 132 (1954); Foster v. Commissioner, 487 F.2d 902, 903 (6th Cir. 1973), affg. per curiam T.C. Memo. 1972-188. Nor is respondent required, as petitioners contend, to

establish a likely source of income; whatever may be the ground rules in respect of respondent's responsibilities in net worth cases, it does not extend to situations where the bank deposits method is used. As we stated in Thomas B. Jones, 29 T.C. 601, 613-614 (1957)--

[w]here, as here, a taxpayer has made numerous and comparatively large deposits in a bank account, the sources and nature of which are not recorded or accounted for in any books of account, the Commissioner's determination of income and of deficiencies in tax thereon by reference to such deposits has been approved in numerous cases. It is, of course, true that the existence of bank deposits, although not explained or accounted for in a satisfactory manner, does not of itself show that the sums deposited were or were not income. But where the Commissioner has determined that they were, the taxpayer has the burden of showing that the determination was wrong.

Goe v. Commissioner, 198 F.2d 851, certiorari denied 344 U.S. 897; Halle v. Commissioner, 175 F.2d 500; Hague Estate v. Commissioner, 132 F.2d 775, certiorari denied 318 U.S. 787, affirming 45 B.T.A. 104; Hoefle v. Commissioner, 114 F.2d 713; Mauch v. Commissioner, 113 F.2d 555; Herman J. Romer [28 T.C. 1228]; and Joseph L. Calafato 42 B.T.A. 881, affirmed per curiam 124 F.2d 187. [Emphasis added.]

See also Estate of Mary Mason, 64 T.C. 651, 657 (1975).

Nor are we required to take a different view because respondent utilized the net bank deposits method rather than resting his determination on specific individual deposits. Cf. Estate of Mary Mason, supra at 665. Granted that the former method is less precise than the latter, there is nevertheless sufficient specificity to avoid the vagaries often present in a net worth case (see Holland v. United States, supra at 127-129). Moreover, since petitioners have chosen to rest their case on a specific explanation of the source of the net deposits, namely funds entrusted to them by friends (see pp. 10, et seq., infra), we need give no more than passing attention to the fact that it may have been unlikely that the restaurant business could have generated the substantial amounts represented by deposits. Foster v. Commissioner, supra.⁵ At best, any such lack of income-generating capacity would be corroborative evidence to support the petitioners' claimed sources of the funds.

5

Petitioners merely assert that their restaurant was incapable of generating additional receipts and fault respondent for not pointing to another likely source. The fact of the matter is that respondent has introduced figures showing that it was not impossible for petitioners' restaurant to generate such receipts. This could have occurred through the generation of additional restaurant income not recorded on customer checks or, if so recorded, not brought home to Eileen or, if brought home, simply not tallied.

We now turn to petitioners' substantive contention regarding the source of the net deposits -- namely, the single explanation⁶ that such deposits represented funds which were entrusted to petitioners by Ping Chung and Rosita, both of whom testified at the trial herein. The following represents a summary of their testimony as well as that of each of the petitioners:

1968 deposits: In January 1967, Ping Chung immigrated to New York from Hong Kong. Notwithstanding his representation on his visa application that he had no financial resources, he and his family carried some \$80,000 with them on the trip from Hong Kong in shirt pockets, handbags, and the like. The day after arriving in New York, Ping Chung brought \$50,000, in \$100 bills, in a paper bag to Fon for "safekeeping". The transaction was not evidenced by any writing. Ping Chung's reason for committing his cash for "safekeeping" was to protect his resources while Fon helped him look for a restaurant in which to invest. He did not care if or how petitioners used such money, or if they used it for their own

6

Petitioners have not contended that any of the deposits in question came from any prior accumulations or from loans or gifts by other persons. They also concede that none of such deposits came from either the restaurant income or proceeds of the sales of securities reported on their tax returns for the years in question. Moreover, since respondent's determination only included net deposits, any inter-account transfers have been automatically eliminated; petitioners do not contend otherwise.

benefit, and he expected no return on his money by way of interest or otherwise; nor did he expect to participate in any gains or losses from the use of money. Ping Chung and Fon had an oral understanding that the latter's only obligation was to return the \$50,000 upon demand.

Petitioners initially stored the cash in a metal box which they placed in a dresser drawer in their apartment so that the money would be readily available if Ping Chung needed it in a hurry. A short while later, they transferred one-half of the cash to their safe deposit box. For eleven months in 1967, petitioners held this money for "safekeeping," and refrained from using any or most of it for their own benefit because of Ping Chung's potential needs. They did, however, invest the money for their own account throughout 1968.

7

These funds were allegedly the sole source of the 1968 bank and brokerage account deposits in issue; petitioners' concerns for any fiduciary responsibility and liquidity had thus apparently been dissipated by this time.

1969 deposits: In February, 1969, Rosita returned to her home in New York after visiting her mother in Hong Kong. She brought with her \$50,000 of her mother's money⁸ to invest in this country. Like Ping Chung, Rosita entrusted this money to petitioners for "safe-keeping." Rosita and Eileen were exploring the possibility of using these funds for real estate investment. The terms of the arrangement with Rosita were identical to those of the arrangement between petitioners and Ping Chung. The cash was stored in the same manner as that received from Ping Chung. Soon after receiving this money, Eileen began investing it for her own benefit and this cash was the source of petitioners 1969 bank and brokerage account deposits.

The testimony of petitioners, Ping Chung, and Rosita was fraught with inconsistencies. For example, there was conflicting testimony concerning the circumstances in which Ping Chung initially handed his bagful of cash to Fon, whether petitioners used any of Ping Chung's money for investment in 1967, and the circumstances attending Rosita's transfer of cash.

⁸ Rosita testified that her mother collected U.S. dollars in Hong Kong as a hobby.

While petitioners herein contend that all of the deposits in issue derived from "safekeeping" funds, Eileen testified that only petitioners' own funds, the source of which remains unexplained, were placed in petitioners' savings accounts. Finally, the record fails to reveal that either the restaurant investment possibility as to Ping Chung or the real estate investment possibility as to Rosita was ever seriously pursued.

It is against the foregoing background that we proceed to discharge the classic task of the trier of facts, namely, the evaluation of the credibility of witnesses (whom we saw and observed, see H. F. Campbell Company v. Commissioner, 443 F.2d 965, 968 (6th Cir. 1971), affg. 54 T.C. 1021 (1970)), in the elusive search for truth. See Alfonso Diaz, 58 T.C. 560 (1972). In making such an evaluation, we need not accept their testimony as gospel, even though it is not controverted; we are entitled to take into account whether it is improbable, unreasonable, or questionable. See Quock Ting v. United States, 140 U. S. 417, 420-421 (1891);

Lovell & Hart, Inc. v. Commissioner, 456 F.2d 145, 148 (6th Cir. 1972); Ruark v. Commissioner, 449 F.2d 311, 312 (9th Cir. 1971), affg. per curiam T.C. Memo. 1969-48; Fleischer v. Commissioner, 403 F.2d 403, 406 (2d Cir. 1968); Albert L. Dougherty, 60 T.C. 917, 932-933 (1973). We have concluded that the explanation advanced by petitioners has a hollow ring and should not be accepted. To hold otherwise would strain credulity beyond any reasonable limits, even if we accept the premise that persons of petitioners' background and that of Ping Chung and Rosita might engage in financial transactions in a manner foreign to Western style.⁹ We simply cannot believe that Ping Chung and Rosita, who were not without some financial sophistication,¹⁰ each gave \$50,000 to petitioners for safe storage in a dresser drawer or for petitioners to use freely as they saw

9

Compare Frances G. Hsiang, T.C. Memo. 1964-19.

10

See pp. 6-7, supra.

11
fit.

In short, we hold that petitioners have failed to carry their burden of proving that respondent's determination is erroneous.

To the extent they have underpaid their tax for 1968 and 1969, petitioners have introduced no evidence as to why an addition to tax under section 6653(a) should not be imposed. Therefore, respondent's determination in this regard is sustained. See Estate of Ralph B. Campbell, 56 T.C. 1, 14 (1971).

Decision will be entered
for the respondent.

11

See Albert D. Coca, T.C. Memo. 1976-323. We also note that prior to the issuance of a notice of deficiency to petitioners, none of the allegedly entrusted funds had been returned to either Ping Chung or Rosita. Thereafter, petitioners issued one \$10,000 check to the order of Ping Chung and two \$5,000 checks to the order of Rosita. Even if the record were clear that the funds represented by these checks ended up in the hands of the payees (which it is not), the timing of such repayments would be suspect. See Bayou Verret Land Co. v. Commissioner, 450 F.2d 850 (5th Cir. 1971), affg. on this point Carlos Marcello, T.C. Memo. 1969-193; Regensburg v. Commissioner, 144 F.2d 41, 44 (2d Cir. 1944).

UNITED STATES TAX COURT

FON S. LEONG and EILEEN LEONG,	)	
	)	
Petitioners,	)	
	)	
v.	)	Docket No. 157-74
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.)		

STIPULATION OF FACTS

The parties hereby stipulate and agree that for the purpose of this case the following facts and exhibits attached hereto and made a part hereof may be taken as true subject to the rights of the parties to introduce other and further evidence not inconsistent with this stipulation and preserving the parties' rights to object, at the time of trial, to any and all portions of said stipulation and attached exhibits, as they may deem to be irrelevant or immaterial.

1. The petitioners had their legal residence at 50 Bayard Street, New York, New York at the time the petition was filed in this case.

2. Petitioners computed their taxable income for the taxable years 1968 and 1969 by using the cash basis method of accounting. Copies of petitioners' 1968 and 1969 income tax returns are attached hereto as Exhibits 1-A and 2-B.

3. Attached hereto as Exhibit 3-C is a schedule of net deposits during 1968 to petitioners' brokerage, savings, and personal checking accounts which were determined to be other income by respondent in adjustment (a) in the statutory notice, dated November 23, 1973.

4. Attached hereto as Exhibit 4-D is a schedule of net deposits during 1969 to petitioners' brokerage, savings, and personal checking accounts which were determined to be other income by respondent in adjustment (a) in the statutory notice, dated November 23, 1973.

5. Attached hereto as Exhibit 5-E is a schedule of gross receipts reported on Schedule C, Form 1040, by the petitioners for the taxable year 1968.

6. Attached hereto as Exhibit 6-F is a schedule of gross receipts reported on Schedule C, Form 1040, by the petitioners for the taxable year 1969.

7. The gross receipts from the sale of stock in the amount of \$82,709.52 reported on Schedule D, Form 1040, by the petitioners for the taxable year 1968 were not the source of any of the deposits in Exhibit 3-C.

8. The gross receipts from the sale of stock in the amount of \$93,976.87 reported on Schedule D, Form 1040, by the

petitioners for the taxable year 1969 were not the source of any of the deposits in Exhibit 4-D.

9. Attached hereto as Exhibits 7-G and 8-H are schedules of individual deposits and withdrawals from petitioners' individual checking account, Trade Bank and Trust Company, #6412-167-4 for the years 1968 and 1969, respectively.

10. Petitioners are not contesting adjustments (c) to (f), inclusive as shown in the statutory notice of deficiency, dated November 23, 1973.

11. Respondent concedes that petitioners gross receipts from their business should not be increased by \$3,909.86 as asserted in adjustment (b) of the statutory notice, dated November 23, 1973.

1322210861421

Form 1040

U.S. Individual Income Tax Return

U.S. Treasury Department, Internal Revenue Service

for the year January 1-December 31, 1968.

or other taxable year beginning 1968, ending 19



1968

Please print or type	First name and initial (If joint return, use first names and middle initials of both)	Last name	Your social security number
	FON S. AND EILEEN	LEONG	070 32 0975
	Home address (Number and street or rural route)		Your occupation
	50 BAYARD STREET		MANAGER
	City, town or post office, and State	ZIP code	Spouse's social security number
	NEW YORK, N. Y.	10013	086 20 1915
	Enter below name and address used on your return for 1967 (if same as above, write "Same"). If none filed, give reason. If changing from separate to joint or joint to separate returns, enter 1967 names and addresses.		Spouse's occupation
	Same		NONE

Your present employer and address

Your Filing Status—check only one:

- 1a ☐ Single
 1b ☒ Married filing joint return (even if only one had income)
 1c ☐ Married filing separately. If spouse is also filing a return, enter her (his) social security number in space provided above and give first name here _____
 1d ☐ Unmarried Head of Household
 1e ☐ Surviving widow(er) with dependent child

Your Exemptions		Regular	65 or over	Blind	Enter number of boxes checked
2a Yourself	☐	☒	☐	☐	1
2b Spouse	☐	☒	☐	☐	1
3a First names of your dependent children who lived with you <u>Donna Denise</u>					
3b Number of other dependents (from page 2, Part I, line 5)					
4 Total exemptions claimed <u>4</u>					

Please attach Copy I of Form W-2 here	Income	5 Wages, salaries, tips, etc. If not shown on attached Forms W-2 attach explanation	5	
	If joint return include all income of both husband and wife	6 Other income (from page 2, Part II, line 3)	6	319.00
		7 Total (add lines 5 and 6)	7	319.00
		8 Adjustments to income (from page 2, Part III, line 5)	8	
		9 Total income ("adjusted gross income") (subtract line 8 from line 7)	9	319.00
	Find tax from table	10 If you do not itemize deductions and line 9 is under \$5,000, find tax in tables on pages 12-14 of instructions. Omit lines 11a, b, c, or d. Enter tax on line 12a.	10	
		11a If you itemize deductions, enter total from page 2, Part IV, line 17. If you do not itemize deductions, and line 9 is \$5,000 or more enter the larger of: (1) 10 percent of line 9; OR (2) \$200 (\$100 if married and filing separate return) plus \$100 for each exemption claimed on line 4, above. Deduction under (1) or (2) limited to \$1,000 (\$500 if married and filing separately).	11a	1598.00
	Figure tax using tax rate schedules	11b Subtract line 11a from line 9. Enter balance on this line	11b	303.00
		11c Multiply total number of exemptions on line 4, above, by \$600	11c	2400.00
		11d Subtract line 11c from line 11b. Enter balance on this line. (Figure your tax on this amount by using tax rate schedule on page 11 of instructions.) Enter tax on line 12a.	11d	2147.00
12a Tax (Check if from: Tax Table ☐ , Tax Rate Schedule ☒ , Sch. D ☐ , or Sch. G ☐)		12a	650.50	
Your Tax, Credits, and Payments	12b Tax surcharge. If line 12a is less than \$734, find surcharge from tables on page 10 of instructions. If line 12a is \$734 or more, multiply amount on line 12a by .075 and enter result. (If you claim retirement income credit, use Schedule B (Form 1040) to figure surcharge.)	12b	491.67	
	12c Total (add lines 12a and 12b)	12c	704.17	
	13 Total credits (from page 2, Part V, line 4)	13		
	14a Income tax (subtract line 13 from line 12c)	14a	704.17	
	14b Tax from recomputing prior year investment credit (attach statement)	14b		
	15 Self-employment tax (Schedule C-3 or F-1)	15	44.75	
	16 Total tax (add lines 14a, 14b, and 15)	16	748.92	
	17 Total Federal income tax withheld (attach Forms W-2)	17		
	18 Excess F.I.C.I. tax withheld (two or more employers—see page 5 of instr.)	18		
	19 ☐ Nonhighway federal gasoline tax—Form 4136, ☐ Reg. Inv.—Form 2439	19		
Balance Due or Refund	20 1968 Estimated tax payments (include 1967 overpayment allowed as a credit)	20	444.00	
	21 Total (add lines 17, 18, 19, and 20)	21	444.00	
	22 If payments (line 21) are less than tax (line 16), enter Balance Due. Pay in full with this return	22	304.92	
	23 If payments (line 21) are larger than tax (line 16), enter Overpayment	23		
	24 Amount of line 23 you wish credited to 1969 Estimated Tax	24		
25 Subtract line 24 from line 23. If U.S. Savings Bonds, with excess refunded or ☐ Refund only	25			

Under penalties of perjury, I declare that I have prepared this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here ☒ Taxpayer's signature John S. Leong Date 1/15/69
☒ Spouse's signature (if filing jointly, both signatures are required if only one had income)

Signature of preparer other than taxpayer 225 West 34th St., N.Y.N.Y. 10001 Date 1/15/69
 Address 225 West 34th St., N.Y.N.Y. 10001

Exhibit 1-A

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Exemptions Complete only for dependents claimed on line 3b, page 1

Form 1040-1965 Page 2

(a) NAME (if more space is needed attach schedule)	(b) Relationship	(c) Months lived in your home, if born or died during year write "B" or "D"	(d) Did dependent have income of \$500 or more?	(e) Amount YOU furnished for dependent's support, if 100% write "ALL"	(f) Amount furnished by OTHERS including dependent
1				\$	\$
2					
3 Total number of dependents listed above. Enter here and on page 1, line 3b					

Income from sources other than wages, etc.

1a Gross dividends and other distributions on stock (list payers and amounts—write (H), (W), (J), for stock held by husband, wife, or jointly)

SCHEDULE 1

ATTACHED

Total line 1a	199 67
1b Exclusion (see instructions).	700 00
1c Capital gain distributions (see page 5 of instructions).	
1d Nontaxable distributions (see page 5 of instructions).	199 67
1e Total (add lines 1b, 1c, and 1d)	84 67
1f Taxable dividends (line 1a less line 1e— not less than zero)	1507 07

Interest (list payers and amounts below)

Earnings from savings and loan assoc. and credit unions.

SCHEDULE 1

Other interest (on bank deposits, bonds, tax refunds, etc.)

ATTACHED

2 Total interest income	7117 50
3 Pensions and annuities, rents and royalties, partnerships, estates or trusts, etc. (attach Sch. B)	
4 Business income or loss (attach Schedule C)	18200 70
5 Sale or exchange of property (attach Schedule D)	14500 30
6 Farm income or loss (attach Schedule F)	

Miscellaneous income (state nature and source)

7 Total miscellaneous income	
8 TOTAL (add lines 1f, 2, 3, 4, 5, 6, and 7). Enter here and on page 1, line 6	31988 97

Adjustments to income

- "Sick pay" if included in line 5, page 1 (attach Form 2440 or other required statement).
- Moving expenses (attach Form 3903).
- Employee business expense (attach Form 2106 or other statement).
- Payments by self-employed person to retirement plans, etc. (attach Form 2900SE).
- TOTAL ADJUSTMENTS (lines 1 through 4).
Enter here and on page 1, line 9

Itemized deductions—Use only if you do not use tax table or standard deduction.

Medical and dental expense (not compensated by insurance or otherwise)—Attach itemized list.

1 One-half of insurance premiums for medical care (but not more than \$150)	
2 Total cost of medicine and drugs	
3 Enter 1% of line 9, page 1	
4 Subtract line 3 from line 2 (not less than zero)	
5 Other medical, dental expenses (include balance of insurance premiums for medical care not deductible on line 1)	
6 Total (add lines 4 and 5)	
7 Enter 3% of line 9, page 1	
8 Subtract line 7 from line 6 (not less than zero)	
9 Total (add lines 1 and 8)	

Contributions.—Cash—including checks, money orders, etc.

(itemize) *AMERICAN RED CROSS UNITED FUND*
BOY SCOUTS, SALVATION ARMY
GENERAL FUND, HEART FUND
BOY SCOUTS, GIRL SCOUTS
SUNDAY SCHOOL CONTRIBUTIONS

10 Total cash contributions	7600
11 Other than cash (see instructions for required statement). Enter total of such items here	
12 Carryover from prior years (see page 7 of instr.)	
13 Total contributions (add lines 10, 11, and 12—see instructions for limitation)	7600

Taxes.—Real estate	
State and local gasoline	375 00
General sales (see page 15 of instructions)	1574 00
State and local income	
Personal property	

14 Total taxes	1649 00
----------------	---------

Interest expense.—Home Mortgage

Installment purchases
Other (itemize)

15 Total interest expense	
---------------------------	--

Miscellaneous deductions.—(see page 8 of instructions)

16 Total miscellaneous	
17 TOTAL DEDUCTIONS (add lines 9, 13, 14, 15, and 16). Enter here and on page 1, line 11a	1898 03

Credits

1 Retirement income credit (Schedule B)	
2 Investment credit (Form 3469)	
3 Foreign tax credit (Form 1116)	
4 TOTAL CREDITS (for page 1, line 13)	

EXPENSE ACCOUNTS.—If you had an expense allowance or charge expenses to your employer, check here (F) and see page 6 of instructions.

EXH 1-A
EXHIBIT 1-A

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SCHEDULE C
(Form 1040)
U.S. Treasury Department
Internal Revenue Service

Profit (or Loss) From Business or Profession
(Sole Proprietorship)
(Compute social security self-employment tax on Schedule C-3 (Form 1040))

1968

10

Attach this schedule to your income tax return, Form 1040 — Partnerships, joint ventures, etc., must file on Form 1065

Name as shown on page 1 of Form 1040

FON S. AND EILEEN LEONG

Social security number

070 32 0975

A Principal business activity Restaurant
(See separate instructions)

(For example: retail—hardware; wholesale—tobacco; services—legal; manufacturing—furniture; etc.)

B Business name Canton Restaurant

C Employer Identification Number 13-1943869

D Business address 6 Mott Street, N.Y., N.Y. 10013

(ZIP code)

E Indicate method of accounting: (1) ☒ cash; (2) ☐ accrual; (3) ☐ other.

F Was there any substantial change in the manner of determining quantities, costs, or valuations between the opening and closing inventories?
☐ YES ☐ NO. If "Yes," attach explanation.

G Were you required to file Forms 1095 and 1099 or 1087 for the calendar year 1968? (See "Item G" in separate instructions for Schedule C.)
☐ YES ☒ NO. If "Yes," where were they filed?

1 Gross receipts or gross sales \$ 27,577.95 Less: Returns and allowances \$ 0.00

2 Inventory at beginning of year (if different from last year's closing inventory attach explanation)

3 Merchandise purchased \$ 19,187.67 less cost of any items withdrawn from business for personal use \$ 0.00

4 Cost of labor (do not include salary paid to yourself)

5 Material and supplies

6 Other costs (explain in Schedule C-1)

7 Total of lines 2 through 6

8 Inventory at end of this year

9 Cost of goods sold and/or operations (subtract line 8 from line 7)

10 Gross profit (subtract line 9 from line 1)

OTHER BUSINESS DEDUCTIONS

11 Depreciation (explain in Schedule C-2)

12 Taxes on business and business property (explain in Schedule C-1)

13 Rent on business property

14 Repairs (explain in Schedule C-1)

15 Salaries and wages not included on line 4 (exclude any paid to yourself)

16 Insurance

17 Legal and professional fees

18 Commissions

19 Amortization (attach statement)

20 Retirement plans, etc. (other than your share—see separate instructions)

21 Interest on business indebtedness

22 Bad debts arising from sales or services

23 Losses of business property (attach statement)

24 Depletion

25 Other business expenses (explain in Schedule C-1)

26 Total of lines 11 through 25

27 Net profit (or loss) (subtract line 26 from line 10). Enter here; in Schedule C-3, line 1; and on Form 1040, page 2, Part II, line 4. Figure your self-employment income and tax on Schedule C-3

SCHEDULE C-1. EXPLANATION OF LINES 6, 12, 14, AND 25

Line No.	Explanation	Amount	Line No.	Explanation	Amount
25	ELECTRICITY	2103.80	25	MISC. GEN. EXP.	341.69
	TELEPHONE	183.84			
	BOILER & CONTAINERS	401.99		TOTAL	6337.74
	REPAIRS & SUPPLIES	467.59			
	CLEANING SUPPLIES	771.12			
	MAINTENANCE	705.81			
	LAUNDRY	843.64	25	POWER & TILES	333.81
	CHANGING ROOMS	448.00		MISC. RENT & OCCUP.	151.50
	ADVERTISING	513.19		TOTAL	485.31

c.3-1-7220-1

EXHIBIT 1-A

40

Form 1040

Combined
with Form
1040A

US

Department of the Treasury / Internal Revenue Service
Individual Income Tax Return

1969

For the year January 1-December 31, 1969, or other taxable year beginning 1969, ending 19

Please print or type

First name and initial (If joint return, use first names and middle initials of both)	Last name	Your social security number
FON S. AND EILEEN	LEONG	070 32 0975
Present home address (Number and street or rural route)		Your occupation
50 BAYARD STREET		MANAGER
City, town or post office, State and ZIP code		Spouse's social security number
NEW YORK, N.Y.		086 28 1915
Enter below name and address used on your return for 1969 (if same as above write "Same"). If none filed, give reason. If changing from separate to joint or joint to separate returns, enter 1968 names and addresses.		Spouse's occupation
NONE		NONE

Name and address of employer at time of filing	SELF EMPLOYED
Your Filing Status (Check only one)	☐ 1 Single ☒ 2 Married filing joint return (even if only one had income) ☐ 3 Married filing separate return and spouse is also filing a return. If this item checked give spouse's social security number in space provided above and enter first name here
	☐ 4 Unmarried Head of Household ☐ 5 Surviving widow(or) with dependent child ☐ 6 Married filing separate return and spouse is not filing a return

Check boxes for exemptions which apply		Regular	65 or over	Blind	Enter number of boxes checked	
7a Yourself		☒	☒	☐		
7b Spouse (applies only if line 2 or line 6 is checked)		☐	☐	☐		
8 First names of your dependent children who lived with you						
DONNA DENISE JEFFREY KEVIN						
Enter number						
4						
9 OTHER DEPENDENTS	(a) NAME—Enter figure 1 in the last column to right for each name listed (if more space is needed, use other side)	(b) Relationship	(c) Months lived in your home. See Instructions, B-2.	(d) \$500 or more income?	(e) Support you furnished. If 100% write "ALL."	(f) Support furnished by dependent and others
10 Total exemptions from lines 7, 8, and 9 above						
24						

Your Income		11 Wages, salaries, tips, etc. (Attach Form W-2 to back. If unavailable, explain on back)		11	
12a Dividends [Total before exclusion]		\$ 1537.67	12b Less Exclusion \$ 1000.00	12c	1337 67
13 Interest (Enter total here and if over \$100, also list in Schedule B, Part II)				13	7891 47
14 Other Income: Total from attached schedules (check schedules used—C ☒ , D ☒ , E ☐ , F ☐)				14	14283 05
15a Total [Add lines 11, 12c, 13 & 14]		\$	15b Less Adjustments [See 1040-1]	15c	16514 14

Your Tax and Surcharge		16 Tax from Tax Table (see tables on T-2 and T-3)		16	
17 Tax surcharge on line 16 (see T-1 for tax surcharge tables)		17			
18 Enter total of lines 16 and 17 OR amount from Schedule T, line 18, if applicable (check if from Tax Table A ☐ , B ☐ , C ☐ , Tax Rate Sch. ☐ , Sch. D ☐ , or Sch. G ☐)		18			
19 Total Federal income tax withheld (attach Forms W-2 to back)		19			
20 Excess F.I.C.A. tax withheld (two or more employers—see R-2)		20			
21 ☐ Nonhighway Federal gasoline tax, Form 4136; ☐ Reg. Inv., Form 2439		21			
22 1969 Estimated tax payments (include 1968 overpayment allowed as a credit)		22	5000 00		
23 Total (add lines 19, 20, 21, and 22)		23			

Balance Due or Refund		24 If line 18 is larger than line 23, enter BALANCE DUE. Pay in full with return		24	
25 If line 23 is larger than line 18, enter OVERPAYMENT		25			
26 Line 25 to be: (a) Credited on 1970 estimated tax \$ 516.94; (b) Refunded \$					

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.	
Sign here	Your signature <i>John S. Leong</i> Date <i>4/1/70</i> Spouse's signature (if filing jointly, BOTH must sign even if only one had income) <i>Eileen Leong</i>
Signature of preparer other than taxpayer, based on all information of which he has any knowledge. 225 West 34th Street, N.Y.N.Y. 10001 Address	

Please attach Copy B of Form W-2 to back

Please attach Check or Money Order here

Exhibit 2-B

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SCHEDULE A
(Form 1040)

Department of the Treasury
Internal Revenue Service

Itemized Deductions

- ▶ See instructions on A-1 and A-2.
▶ If you use this schedule, attach it to Form 1040.

1969

Name as shown on Form 1040

Social Security Number

RON S. AND EILEEN LEONG

070 32 0975

Medical and dental expenses (not compensated by insurance or otherwise) for medicine and drugs, doctors, dentists, nurses, hospital care, insurance premiums for medical care, etc.

- 1 One half of insurance premiums for medical care (but not more than \$150) . . .
- 2 Medicine and drugs . . .
- 3 Enter 1% of line 15c, Form 1040 . . .
- 4 Subtract line 3 from line 2. Enter difference (if less than zero, enter zero) . . .
- 5 Itemize other medical and dental expenses (include balance of insurance premiums for medical care not deducted on line 1) . . .

150.00

Contributions.—Cash—including checks, money orders, etc.

(Itemize)

AMERICAN RED CROSS

40.00

UNITED FUND

15.00

BOY SCOUTS

15.00

SAVATION ARMY

15.00

CANCER FUND

12.50

HEART FUND

12.50

GIRL SCOUTS

10.00

SUNDRY CONTRIBUTIONS

150.00

11 Total cash contributions . . .

450.00

12 Other than cash (see instructions on A-1 for required statement). Enter total for such items here . . .

13 Carryover from prior years (see instructions on A-2) . . .

14 Total contributions (add lines 11, 12, and 13—see instructions on A-2 for limitation) . . .

450.00

Interest expense—Home mortgage . .

Installment purchases . . .

Other (Itemize) . . .

6 Total (add lines 4 and 5) . . .

7 Enter 3% of line 15c, Form 1040 . . .

8 Subtract line 7 from line 6. Enter difference (if less than zero, enter zero) . .

9 Total deductible medical and dental expenses (add lines 1 and 8) . . .

150.00

Taxes.—Real estate . . .

State and local gasoline . . .

General sales (see sales tax tables) . . .

State and local income . . .

Personal property . . .

304.00

744.74

15 Total interest expense . . .

Miscellaneous deductions for child care, alimony, union dues, casualty losses, etc. (see instructions on A-2) . . .

16 Total miscellaneous deductions . .

17 TOTAL ITEMIZED DEDUCTIONS (add lines 9, 10, 14, 15, and 16—enter here and on Schedule T, line 2) . .

3148

74

10 Total taxes . . .

7748.74

EXHIBIT 2-B

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SCHEDULE C
(Form 1040)
Department of the Treasury
Internal Revenue Service

Profit (or Loss) From Business or Profession
(Sole Proprietorship)
Partnerships, joint ventures, etc., must file on Form 1065
See separate instructions If you use this schedule, attach it to Form 1040

1969

06
5812

Name as shown on Form 1040

FOH S. AND EILEEN LEONG

Social security number
070 32 0975

- A Principal business activity Restaurant product
(See separate instructions) (For example: retail—hardware; wholesale—tobacco; services—legal; manufacturing—furniture; etc.)
- B Business name Canton Restaurant C Employer identification number 13-19438
- D Business address 6 Mott Street, N.Y.N.Y. 10013
- E Indicate method of accounting: (1) ☒ cash; (2) ☐ accrual; (3) ☐ other. (ZIP code)
- F Was there any substantial change in the manner of determining quantities, costs, or valuations between the opening and closing inventories?
☐ YES ☐ NO. If "Yes," attach explanation.
- G Were you required to file Forms 1096 and 1099 or 1087 for the calendar year 1969? (See "Item G" in separate instructions for Schedule C.)
☐ YES ☐ NO. If "Yes," where were they filed?

1	Gross receipts or gross sales \$	Less: Returns and allowances \$	67713 05
2	Inventory at beginning of year (if different from last year's closing inventory attach explanation)		
3	Merchandise purchased \$	less cost of any items withdrawn from business for personal use \$	44513 18
4	Cost of labor (do not include salary paid to yourself)		
5	Material and supplies		
6	Other costs (explain in Schedule C-1)		
7	Total of lines 2 through 6		
8	Inventory at end of this year		44513 18
9	Cost of goods sold and/or operations (subtract line 8 from line 7)		45179 87
10	Gross profit (subtract line 9 from line 1)		
OTHER BUSINESS DEDUCTIONS			
11	Depreciation (explain in Schedule C-2)		625 17
12	Taxes on business and business property (explain in Schedule C-1)		1213 97
13	Rent on business property		4225 00
14	Repairs (explain in Schedule C-1)		
15	Salaries and wages not included on line 4 (exclude any paid to yourself)		139 44 00
16	Insurance		759 20
17	Legal and professional fees		4 00 00
18	Commissions		
19	Amortization (attach statement)		
20	Retirement plans, etc. (other than your share—see separate instructions)		
21	Interest on business indebtedness		
22	Bad debts arising from sales or services		
23	Losses of business property (attach statement)		
24	Depletion		
25	Other business expenses (explain in Schedule C-1)		8461 38
26	Total of lines 11 through 25		19916 81
27	Net profit (or loss) (subtract line 26 from line 10). Enter here and include in total on line 14, Form 1040. ALSO enter on Schedule SE, Part I, line 1		13483 05

SCHEDULE C-1. EXPLANATION OF LINES 6, 12, 14, AND 25

Line No.	Explanation	Amount	Line No.	Explanation	Amount
15	GAS & ELECTRIC	4315.38	25	MISC. EXPENSES	103.20
	TELEPHONE	156.73		TOTAL	826.26
	BOXES & CONTAINERS	353.40			
	RESTAURANT SUPPLIES	917.16	14	PAYROLL TAXES	100.47
	CLEANING SUPPLIES & P.	323.14		N.Y.C. RENT OCCUPANCY	462.50
	MAINT. & REPAIRS	4421.97		TOTAL	1511.27
	LAUNDRY	862.01			
	GARAGE REMOVAL	778.20			
	ADVERTISING	230.00			

EXHIBIT 2-B

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FON S. LEONG AND EILEEN LEONG - Dkt. No. 157-74

SCHEDULE OF NET DEPOSITS

Taxable Year Ended December 31, 1968

	<u>Account #</u>	<u>Deposits</u>	<u>Withdrawals</u>
Bowery Savings Bank (S)	5154015	\$ 1,000.00	-
Bowery Savings Bank (S)	A-74319	300.00	-
Manhattan Savings Bank (S)	564659	7,030.81	\$ 16,945.27
Manhattan Savings Bank (S)	529621	900.00	-
Manhattan Savings Bank (S)	555284	500.00	-
Manhattan Savings Bank (S)	557615	250.00	-
Trade Bank & Trust Co. (S)	2194	23,675.54	23,214.16
Trade Bank & Trust Co. (S)	D-5276	5,673.24	6,109.35
Trade Bank & Trust Co. (PC)	6412-167-4	54,925.78	54,795.66
Scheinman, Hochstin, Trotta (B)	67-15144	57,028.01	41,137.62
First Hanover Corp. (B)	39-00236	<u>43,241.80</u>	<u>4,430.00</u>
Totals		\$194,525.18	\$146,632.06
Less withdrawals		<u>146,632.06</u>	
Net Deposits		<u>\$ 47,893.12</u>	

(S) - Savings Accounts
 (B) - Brokerage Accounts
 (PC) - Personal Checking Account

Exhibit 3-C

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FON S. LEONG AND EILEEN LEONG - Dkt. No. 157-74

SCHEDULE OF NET DEPOSITS

Taxable Year Ended December 31, 1969

	<u>Account #</u>	<u>Deposits</u>	<u>Withdrawals</u>
Chemical Bank N.Y. Trust (S)	19732	\$ 12,507.52	\$ 8,632.38
Bowery Savings Bank (S)	A-74319	1,130.00	-
Bowery Savings Bank (S)	5154015	1,700.00	-
Manhattan Savings Bank (S)	564659	5,073.40	3,443.75
Manhattan Savings Bank (S)	529621	1,553.62	4,825.75
Manhattan Savings Bank (S)	555284	600.00	-
Manhattan Savings Bank (S)	557615	850.00	-
Trade Bank & Trust Co. (S)	2194	27,556.67	22,178.75
Trade Bank & Trust Co. (S)	D-5276	1,444.40	-
Trade Bank & Trust Co. (S)	6419	2,775.91	-
Trade Bank & Trust Co. (PC)	6412-167-4	62,873.77	62,894.11
Scheinman, Hochstin, Trotta (B)	67-15144	4,831.95	5,982.63
Orient Securities, Inc. (B)	1-018713	25,375.25	-
Bache & Co. (B)	73-36801	10,118.90	1,574.98
First Hanover Corp. (B)	39-00236	3,286.87	16,945.93
Hirsch & Co. (B)	292823	10,645.98	-
Abraham & Co. (B)		2,118.88	3,459.24
S. J. Salmon & Co. (B)		2,704.13	-
John Muir & Co. (B)		<u>3,217.50</u>	<u>3,155.00</u>
Totals		\$180,364.75	\$133,092.52
Less withdrawals		<u>133,092.52</u>	
Net Deposits	- 45-	<u>\$ 47,272.23</u>	

(S)-Savings Accounts (B)-Brokerage Accounts (PC)-Personal Checking Account

Exhibit 4-a

FON S. LEONG AND EILEEN LEONG - Dkt. No. 157-74
SCHEDULE OF GROSS RECEIPTS REPORTED ON SCHEDULE C, 1040
Taxable year Ended December 31, 1968.

Total deposits, Chemical Bank N.Y. Trust Co. #044-001576		\$31,314.97
Plus Cash Disbursements:		
Business Deductions	\$11,769.87	
Purchases	5,270.35	
Cigarette purchases	617.43	
Drawings	<u>6,926.75</u>	<u>24,584.40</u>
Gross receipts (deposited and disbursed)		<u>55,899.37</u>
Gross receipts reported on tax return		<u>\$55,899.95</u>

Exhibit 5-E

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FON S. LEONG AND FILEEN LEONG - Dkt. No. 157-74
SCHEDULE OF GROSS RECEIPTS REPORTED ON SCHEDULE C, 1040
Taxable year Ended December 31, 1969

Total deposits, Chemical Bank N.Y. Trust Co. A/C #044-001576		\$45,800.27
Plus Cash Disbursements:		
Business deductions	\$14,132.12	
Purchases	10,290.99	
Cigarette purchases	513.24	
Drawings	<u>886.11</u>	<u>25,822.46</u>
Gross receipts (deposited and disbursed)		\$71,622.73
Less nontaxable sales tax collections deposited in A/C #044-001576		<u>3,758.65</u>
Net gross receipts (deposited and disbursed)		<u>67,864.08</u>
Gross receipts reported on tax return		<u>67,713.05</u>

Exhibit 7-6

FON S. LEONG AND EILEEN LEONG - Dkt. No. 157-74
SCHEDULE OF DEPOSITS AND WITHDRAWALS FROM TRADE BANK & TRUST CO.
ACCOUNT # 6412-167-4
Taxable Year 1968

Deposits

<u>Date</u>	<u>Total</u>	<u>Cash</u>	<u>Checks</u>
2/28	520.00	500.00	20.00
2/20	1,000.00	1,000.00	
3/12	700.31	700.00	.31
3/18	2,045.00	2,000.00	45.00
3/26	2,062.50	2,000.00	62.50
4/1	1,090.00	1,000.00	60.00
			30.00
4/16	4,339.41		4,331.91
			7.50
4/23	2,100.00	2,100.00	
5/14	2,000.00	2,000.00	
5/20	900.00	900.00	
5/27	2,400.00	2,400.00	
5/31	200.00	200.00	
6/17	1,700.00	1,700.00	
6/27	1,000.00	1,000.00	
7/16	1,500.00	1,500.00	
7/22	3,089.00	3,050.00	39.00
8/1	300.00	300.00	
8/22	1,800.00	1,800.00	
9/3	900.00	900.00	
9/10	1,500.00	1,500.00	

Withdrawals

<u>Date</u>	<u>Payee</u>	<u>Check #</u>	<u>Total</u>
Jan.	Benjamin Ginn	115	20.00
3/4	Scheinman, Hochstin, Trotta	116	1,226.00
3/13	" " "	117	913.65
3/19	First Hanover Corp.	118	1,964.79
4/2	Trade Bank Safe Deposit	119	12.60
4/3	First Hanover Corp.	120	2,581.75
4/17	Scheinman, Hochstin, Trotta	121	1,801.14
4/22	First Hanover Corp.	122	2,380.50
4/25	Scheinman, Hochstin, Trotta	123	3,008.88
5/14	First Hanover Corp.	124	1,308.75
5/14	Bank of America	125	84.65
5/20	Scheinman, Hochstin, Trotta	126	1,251.26
5/20	Brudis Shirt Shop	127	40.00
5/27	Scheinman, Hochstin, Trotta	128	2,496.90
6/1	Irving R. Raber	129	166.00
6/20	First Hanover Corp.	131	1,630.00
6/27	Scheinman, Hochstin, Trotta	132	1,000.00
6/29	Periodical Publishers	133	13.50
7/1	Irving R. Raber	134	166.00
7/22	First Hanover Corp.	135	1,760.18
7/22	Scheinman, Hochstin, Trotta	136	2,850.75
8/1	Irving R. Raber	137	166.00
8/20	Aid Association for Lutherane	138	95.84
8/29	First Hanover Corp.	139	1,799.75
9/3	Irving R. Raber	141	166.00

Deposits

<u>Date</u>	<u>Total</u>	<u>Cash</u>	<u>Checks</u>	<u>Date</u>
9/23	\$2,600.00	\$2,600.00		9/10
				9/23
				10/1
				10/1
				10/8
10/1	200.00	200.00		10/11
10/8	2,860.00	2,800.00	60.00	10/14
10/11	5,350.49		5,350.49	10/14
				10/20
				10/29
11/1	2,120.00	2,120.00		11/1
11/4	200.00	200.00		11/14
11/18	1,300.00	1,300.00		11/14
11/21	400.00	400.00		11/8
11/26	3,167.69	1,500.00	1,667.69	11/21
12/2	2,000.00	2,000.00		
12/9	3,081.38		3,081.38	11/27
12/18	<u>500.00</u>	<u>500.00</u>	<u> </u>	12/2
				12/5
	<u>\$54,925.78</u>	<u>\$40,170.00</u>	<u>\$14,755.78</u>	12/12
				12/18

Exhibit 7-6

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Withdrawals

<u>Payee</u>	<u>Check #</u>	<u>Total</u>
Scheinman, Hochstin, Trotta	142	\$2,127.00
First Hanover, Corp.	143	2,773.00
Periodical Publishers	144	13.50
Irving R. Raber	145	166.00
Scheinman, Hochstin, Trotta	146	2,861.64
First Hanover, Corp.	147	4,559.00
Aid Association for Lutherane	148	95.22
" " " "	149	94.66
Carmine Castaldo	150	400.00
Scheinman, Hochstin, Trotta	151	200.42
" " "	152	2,128.00
Irving R. Raber	153	166.00
Scheinman, Hochstin, Trotta	154	15.56
Bache & Co.	155	1,276.50
Castaldo Quality Meats	156	400.00
First Hanover, Corp.	157	3,008.88
Irving R. Rader	158	166.00
Bache & Co.	159	2,000.00
Scheinman, Hochstin, Trotta	160	2,937.39
Carmine Castaldo	161	500.00
Bank Deposit Memo		<u>2.00</u>
		<u>\$54,795.66</u>

FON S. LEONG AND EILEEN LEONG -
SCHEDULE OF DEPOSITS AND WITHDRAWALS
ACCO # 6412-167-
Taxable Year 1969

Deposits

<u>Date</u>	<u>Total</u>	<u>Cash</u>	<u>Checks</u>	<u>Date</u>
1/3	\$ 1,200.00	\$1,200.00		1/2
1/23	3,370.05		\$3,370.05	1/3
1/24	2,019.70	2,019.70		1/3
1/28	400.00	400.00		1/23
				1/24
3/3	3,641.99	3,600.00	11.40	1/28
			15.00	
			15.59	
				2/3
3/4	200.00	200.00		2/3
3/11	2,000.00	2,000.00		3/4
3/17	1,597.19	750.00	708.93	3/4
			13.26	
			30.00	3/11
			30.00	3/19
			20.00	3/19
			45.00	3/25
4/1	2,000.00	2,000.00		4/1
4/14	5,400.00	5,400.00		4/2
4/22	1,150.00	1,150.00		4/14
4/30	3,200.00	3,200.00		4/14
5/1	4,577.34		4,577.34	4/22
				5/1
6/3	1,000.00	1,000.00		5/2
6/4	3,755.00	600.00	3,155.00	5/2
6/10	400.00	400.00		5/2
6/20	2,300.00	2,300.00		5/2

Eileen + S-H

5/10

Dkt. No. 157-74
FROM TRADE BANK & TRUST CO.

4

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Withdrawals

<u>Payee</u>	<u>Check #</u>	<u>Total</u>
Irving R. Raber	162	\$ 166.00
Periodical Publishers	163	13.50
Scheinman, Hochstin, Trotta	164	1,156.50
Bache & Co.	165	2,868.25
Orient Securities, Inc.	166	2,686.25
Carmin Castaldo	167	400.00
Bruce Halpern	168	3,500.00
Irving R. Raber	169	166.00
" " "	170	166.00
Bank of America	171	58.43
Hersch & Co.	172	1,958.26
Bache & Co.	173	1,623.00
Trade Bank & Trust	174	13.65
Periodical Publishers	175	13.50
Orient Securites, Inc.	176	1,724.00
Irving Raber	177	166.00
First Hanover Corp.	178	1,395.75
Orient Securities, Inc.	179	4,066.25
" " "	180	1,162.50
John Muir & Co.	181	3,217.50
First Hanover & Co.	182	331.24
Orient Securities	183	780.00
John R. Raber	184	166.00
Kee Travel	185	2,910.00

Deposits

Exhibit 8-H

<u>Date</u>	<u>Total</u>	<u>Cash</u>	<u>Checks</u>	<u>Date</u>
6/24	\$ 1,000.00	\$1,000.00		6/2
6/30	1,362.50	1,300.00	\$ 62.50	6/4
				6/4
				6/10
				6/20
				6/25
8/1	700.00	700.00		6/30
8/5	2,000.00	2,000.00		6/30
8/19	4,800.00	4,800.00		8/1
8/29	500.00	500.00		8/5
9/16	1,100.00	1,100.00		8/19
9/18	500.00	500.00		8/20
9/24	500.00	500.00		9/30
				9/4
				9/16
				9/19
				9/24
10/7	2,000.00	2,000.00		10/1
10/14	2,000.00	2,000.00		10/1
				10/8
11/10	2,500.00	2,500.00		10/14
				11/3
				11/8
				12/1
				12/3
				12/3
12/2	1,500.00	1,500.00		12/3
12/17	<u>4,200.00</u>	<u>4,200.00</u>		12/6
				12/16
	<u>\$62,873.77</u>	<u>\$50,819.70</u>	<u>\$12,054.07</u>	12/17

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Withdrawals

<u>Payee</u>	<u>Check #</u>	<u>Total</u>
Irving Raber	186	\$ 166.00
Granite Securities Corp.	187	3,379.25
S. J. Salmon & Co.	188	1,337.63
Bache & Co.	189	516.17
Orient Securities	190	2,337.00
First Hanover	191	1,000.00
Periodical Publishers	193	13.50
Hirsch & Co.	192	1,312.58
Irving Raber	194	180.00
Harold L. Lee & Sons Travel	195	1,246.59
Service		
Natl. Bank of Tulsa	196	212.58
Gordon Meyor	197	6,000.00
S. J. Salmon & Co.	198	300.00
Irving Raber	199	194.00
S. J. Salmon & Co.	200	1,066.50
Con Edison	201	125.00
Hirsch & Co.	202	519.59
Irving Raber	203	180.00
Periodical Publishers	204	13.50
Hirsch & Co.	205	2,084.50
Abraham & Co.	206	1,825.00
Irving Raber	207	180.00
Scheinman, Hechstin, Trotta	208	2,418.38
Scheinman, Hochstin, Trotta	209	138.01
Irving Raber	210	180.00
Hirsch & Co.	211	696.65
Abraham & Co.	212	293.88
Con Edison	213	46.04
Irving Raber	214	330.00
Hirsch & Co.	215	<u>4,075.00</u>

\$62,894.11

POINTS RELIED UPON

Respondent does not have to prove a likely source of income or negate all possible sources of non-taxable income as a condition to using the bank deposits method to reconstruct income. Even so, it is respondent's position that petitioners' restaurant was a likely source that could indeed have produced the unexplained deposits. Furthermore, the only evidence offered by petitioners concerning a non-taxable source, three checks, an affidavit and testimony of petitioners and two of the witnesses was so incredible and contradictory that it is not worthy of belief. Therefore, petitioners have not shown a non-taxable source for the unexplained deposits, and, although not required, all possible sources of non-taxable income have been negated.

The bank deposits method may be used by itself to reconstruct income and to prove the incorrectness of taxpayers' records. It is not necessary for respondent to introduce independent evidence that such books and records are false before the bank deposits method may be used.

The significant amounts of the unreported income and the incredulous explanations advanced by petitioners clearly show that petitioners were negligent in not reporting this income.

share in any of the profits made from the use of her money.

(Tr. 163, 164) But, of course, she presumably would be willing to share in the profits made from any real estate investment of this money. Here again, there was no written evidence of the transfer and no date specified for repayment. (Tr. 79) Petitioners cannot expect this court to believe such doubtful and unconvincing testimony which in part was inconsistent with her prior statements. (Tr. 182)

Once again petitioners produced two checks purporting to repay \$10,000.00 to Rosita Fu which had never been mentioned or shown to respondent prior to their introduction at trial. (Tr. 33-37, Exs. 10, 11) This evidence along with the two checks to Ping Chung fit right into the pattern of strange and untenable evidence introduced by petitioners at trial. (Exs. 9,10,11 and Entire Record)

Why could not Ping Chung and Rosita Fu put their money in a metal box in their own dresser or in their own safe deposit vault? If this money deposited really belonged to Ping Chung and Rosita Fu, they would have demanded a portion of the gain from the use of their money!

It is also respondent's position that petitioners had a likely source of income, their restaurant business. The

Exhibit A

Fon S. Leong and Eileen Leong, Docket No. 157-74

Computation of Potential Gross Receipts
from Canton Restaurant
1968 and 1969

<u>Time (PM)</u>	<u>Utilization (1)</u>	<u>Number of Customers</u>		
6:00 - 6:45	1/4	10		
6:45 - 7:30	1/2	20		
7:30 - 8:15	3/4	30		
8:15 - 9:00	Full	40		
9:00 - 9:45	3/4	30		
9:45 - 10:30	1/2	20		
10:30 - 11:15	1/4	10		
		<u>160</u>		
Cost per dinner		\$ <u>x2.00</u>		
Gross receipts per day		\$ <u>320.00</u>		
		<u>x7</u>		
Gross receipts per week		\$ <u>2,240.00</u>		
		<u>x50</u>		
Gross receipts per year		\$ <u>112,000.00</u>	\$112,000.00	
Less gross receipts per returns	(1968)	<u>55,899.95</u>	(1969)	<u>67,713.05</u>
Unreported income	(1968)	\$ <u>56,100.05</u>	(1969)	\$ <u>44,286.95</u>
Unexplained deposits	(1968)	\$ <u>47,893.12</u>	(1969)	\$ <u>47,272.23</u>

(1) Full capacity = 40 persons

Exhibit B

Fon S. Leong and Eileen Leong, Docket No. 157-74

<u>G.R.</u>	<u>Weeks Per Year</u>	<u>G.R. Per Week</u>	<u>Days per Week</u>	<u>G.R. Per Day</u>	<u>Cost per Meal</u>	<u>No. of Customers Per day</u>
<u>1968</u> \$55,899.95 ÷	50	= \$1,118.00 ÷	7	= \$160.00 ÷	\$2.00	= 80
<u>1969</u> \$67,713.05 ÷	50	= \$1,354.00 ÷	7	= \$194.00 ÷	\$2.00	= 97

Gross Receipts (G.R.)

55

1 two persons who are here today as witnesses. Now, these two
2 other parties will also testify that these funds were not
3 income. We will utilize the testimony of the Revenue Agent
4 on this case, to show that the restaurant was too small to
5 have generated additional income alleged in the statutory
6 notice, and that his investigation disclosed no other source
7 of income, other than the income computed by what I deem to
8 be a hybrid method of computation.

9 The statutory notice indicates that notwithstanding
10 extensive purchases and sales of stocks and securities, that
11 with the exception of one inconsequential item, these long
12 and short term gains and losses were properly reported and
13 accounted for.

14 THE COURT: Is it my understanding that, to the
15 extent that the bank deposits represent the proceeds from
16 the sale of securities, or dividends, or income, they have
17 already been included?

18 MR. COBERT: They have -- they have, Your Honor.

19 THE COURT: Is that correct, Mr. Campbell?

20 MR. CAMPBELL: Your Honor, I'm not sure if I
21 understand your question.

22 THE COURT: Well, let me put it this way: I
23 could -- without knowing what's in here at the moment --
24 let me give you this example -- I could presumably find,
25 possibly find that the petitioners here received the two

1 payments that were alleged to have been made of \$50,000.00
2 and invested the money, and that was not income because it
3 was gifts, but it was gifts for them to use as they wanted,
4 and they invested the money and traded in securities and
5 had dividend income from them. And to the extent that the
6 bank, quote, "Unexplained," quote, bank deposits in this
7 case represented gains from the sale of those -- of securi-
8 ties flowing from the investment of that money, or dividends
9 it would be taxable to them. Now, if I understood Mr.
10 Cobert correctly, those gains and those dividend items are
11 already included in income, so there's no -- I'm left --

12 MR. CAMPBELL: Yes.

13 THE COURT: -- with where did the initial monies
14 come from? Is that correct?

15 MR. CAMPBELL: Yes, Your Honor.

16 MR. COBERT: That is the issue, Your Honor.

17 THE COURT: And you understand, Mr. Campbell, that
18 I might even conclude that the business did produce this
19 money, but did it in past years? In which event, you're
20 out of -- you're out of Court, too. I have to find that
21 they got this income from a taxable source, or that they
22 haven't carried their burden, if they have the burden, as
23 I think they do, of proving to me that they haven't during
24 the taxable years. If I find that it came from the business
25 from a prior year, that's your problem.

1 Q And you -- did you not then respond, "Well, there
2 may have been one or two more, and I let it go at that?"

3 A You said 8, and I said there must be about 12.

4 THE COURT: Mr. Cobert, I have to tell you that
5 in terms of the money we're dealing with, whether there were
6 8 or 12 tables doesn't make any difference. Now, c'mon.
7 Get off the head of that pin.

8 MR. COBERT: Did you express your opinion to me
9 as to whether that business could have generated the --
10 approximately \$50,000.00 additionally you're charging in
11 '68, 1968, as other income; and 1969 as other income? And
12 what was that opinion?

13 A I made some -- some mention as to what I thought.

14 Q And what was that mention?

15 A I believe I indicated that I would be surprised
16 to learn that the business generated the excess deposits in
17 question.

18 THE COURT: In that -- in those particular taxable
19 years?

20 THE WITNESS: I believe that was my response.

21 MR. COBERT: Didn't we go much further than that,
22 and you said you didn't think it -- to quote you, you didn't
23 think it was possible to have generated any additional in-
24 come, or that additional income?

25 A I don't recall making that statement.

1 as I attempted to do a minute ago, that I had accepted the
2 receipts as reported per review of the records at the time
3 of the examination, and in view of the amount involved, I
4 just never considered further, that the restaurant might be
5 a source.

6 Q Was this one of your first cases?

7 A It really was.

8 Q Did you discuss this with your Group Chief and
9 then with the review staff, before issuing your final report?

10 THE COURT: That's going too far. I've heard
11 enough on this. I believe --

12 MR. COBERT: I have no further questions, Your
13 Honor. I'll let it stand.

14 THE COURT: I believe that the record already
15 indicates -- but I may not -- my recollection may not be
16 clear. It may have been in Chambers. At least the Court
17 was under the impression that up until this moment the
18 respondent was resting its case on the -- really, on the
19 basis that credibility was involved and the credibility was
20 whether I believed these witnesses as to the source. We
21 had a discussion of the Telle Foster case. And the frame-
22 work of this case was either I believed this, or I didn't,
23 this testimony. And that generally I was not -- I did not
24 understand up until this point, that respondent was point-
25 ing to the restaurant business a likely source, and indeed,

1 in the Trial Memorandum, which the respondent submitted and
2 which I now direct that both Trial Memoranda be made part of
3 the record, there is no indication whatsoever that any such
4 position was being taken. Now, respondent's not bound by its
5 Trial Memorandum, but I think given all the circumstances
6 here, there is some basis for putting this Trial Memorandum
7 in the record and respondent -- and petitioner's Trial
8 Memorandum, as well, and respondent may have its exception
9 to any objection it cares to make.

10 MR. CAMPBELL: I have no objection. Your Honor,
11 we stated it was other income. I don't know the source, but --
12 It was just I was -- well, no more questions, Your Honor.

13 THE COURT: I understand that, but if you take this
14 memorandum and the context of everything else that's going
15 on in this case, including what I believe was on -- is on
16 the record at the time of opening statements and the sub-
17 mission of the Stipulation of Facts, this is the first time
18 that I was under the impression that respondent seriously
19 contended that the business could have generated this amount
20 of money in these years. You recall, I warned you, I be-
21 lieve on the record, that the business might have generated
22 this in past years and if so, you didn't have a leg to stand
23 on. And you agreed with me. This is the first time the
24 Court has had any indication that it was respondent's con-
25 tention that the business could have generated this amount

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September 26, 1977

A. Daniel Fasaro, Clerk of Court
U. S. Circuit Court of Appeals
Foley Square
New York, N. Y. 10007

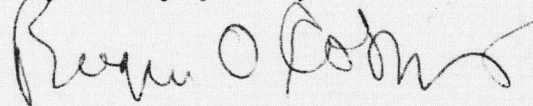
Re: Leong, et ano. v. Commissioner
Docket No. 77-4098

Dear Sir:

Attached find brief on appeal and appendix
attached thereto.

We have today forwarded three additional copies
to Myron C. Baum, Acting Assistant Attorney General, Tax
Division, Department of Justice, pursuant to his written
request.

Very truly yours,



Eugene O. Cobert

EOC:sbr
Enc.